

NTSB Order No. EA-5153

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 26th day of April, 2005

Respondent.

Docket SE-17051

The relevant facts and dates are straightforward.

Respondent and counsel for the Administrator participated in an

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informal conference on January 14, 2004. No agreement was reached. The Order of Suspension was then mailed to respondent at the address on file and by certified mail. Respondent's mother signed for the letter on January 30, 2004. The notice of appeal was due by February 5<sup>th</sup>. See decision of May 28<sup>th</sup> at footnote 6. Respondent's notice of appeal was postmarked February 17<sup>th</sup>, 12 days late.

Respondent here reiterates the arguments he made before the law judge - arguments the law judge expertly addressed and to which we need add little. Respondent contends that good cause exists in the fact that he responded to the Administrator's order just as soon as he returned home and opened his mail, on February 14, 2004. Respondent also argues that the Board has not been consistent in its application of the good cause test, finding good cause for the Administrator but not for respondents. We find neither argument convincing.

As the law judge noted, after the informal conference respondent knew or should have known that the Administrator would be issuing the Order of Suspension and that respondent would need to respond. He knew that his work was taking him away for quite some time from the address the FAA had on file. Yet he neither advised his mother to alert him to any letter from the FAA, nor changed his address with the FAA or notified the FAA attorney who participated in the informal conference that he would be away, for how long, and how or where he could be reached. Moreover, we find it more likely than not that the FAA attorney, as asserted

here, specifically advised respondent that the order would be coming shortly and that he would have only 20 days to appeal it to the NTSB.<sup>2</sup> Respondent's behavior was not reasonable in the circumstances, and we do not find it constitutes good cause to waive our rules.

Furthermore, we find no merit in respondent's second argument. With only two cited cases, respondent attempts a referendum on the Board's application of the good cause rule by way of the argument that the Board finds good cause for the Administrator but not for respondents and, while not so arguing, assumably expects us to right that wrong here. The first cited case, Administrator v. Ramaprakash, NTSB Order No. EA-4947 (2002), reversed Ramaprakash v. FAA and NTSB, 346 F.3d 1121 (D.C. Cir. 2003), involved a finding that the Administrator had shown good cause to waive the 6-month requirement of the stale complaint rule, an entirely different matter, and was, in any event, reversed by the Court of Appeals. Furthermore, the issue in that case was not akin to the one before us. We were considering whether the FAA had acted promptly after discovering the violation, a very different issue. The second cited case, Administrator v. Ikeler, NTSB Order No. EA-4695 (1998), also involved the stale complaint rule and, significantly, follows the Board's major exception to the stale complaint rule allowing the

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<sup>2</sup> As the law judge noted, the FAA has no reason to lie about this matter, and the respondent does not argue that he was not told.

Administrator greater leeway when she does not learn of the violation until after the 6 months has run.

In the context of late-filed notices of appeal and appeal briefs, the Board consistently follows the good cause policy established on remand from Hooper v. NTSB and FAA, 841 F.2d 1150 (D.C. Cir. 1988). That is, "[the Board] intends to adhere uniformly to a policy requiring the dismissal, absent a showing of good cause, of all appeals in which timely notices of appeal, timely appeal briefs or timely extension requests to submit those documents have not been filed." Administrator v. Hooper, 6 NTSB 559, 560 (1988). The Board publishes decisions addressing late-filed notices of appeal and appeal briefs, even those issued under delegated authority by the General Counsel, and respondent cites us no case, and we are aware of none, where we have not followed this policy. Nor does respondent cite any case, nor are we aware of any since our decision in Hooper,<sup>3</sup> in which we applied that standard in a manner that is inconsistent with the result here.

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<sup>3</sup> We note that our case law even before Hooper is consistent with the result we reach here. See, e.g., Administrator v. Grammer, 6 NTSB 490 (1988) (untimely notice of appeal from order of suspension not excused where respondent's mother signed for certified mail containing the order but did not contact respondent to inform him of its arrival).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 180-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>4</sup>

ROSENKER, Acting Chairman, ENGLEMAN CONNERS, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.

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<sup>4</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).